

No. 23-16030<sup>1</sup>

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**IN THE**  
**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

HELEN DOE, parent and next friend of Jane Doe, et al.,

*Plaintiffs-Appellees,*

V.

THOMAS C. HORNE, in his official capacity as  
State Superintendent of Public Instruction, et al.,

*Defendants-Appellants,*

And

WARREN PETERSEN, Senator, President of the  
Arizona State Senate;

BEN TOMA, Representative, Speaker of the  
Arizona House of Representatives,

*Real Parties In Interest.*

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Appeal from the United States District Court  
District of Arizona

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**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3  
FOR STAY PENDING APPEAL**

**RELIEF REQUESTED BY AUGUST 14, 2023**

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<sup>1</sup> Appellant Horne has filed a motion to consolidate this appeal with 23-16026.

### **CIRCUIT RULE 27-3 CERTIFICATE**

Pursuant to Circuit Rule 27-3(a), I hereby certify that to avoid irreparable harm to petitioner Thomas C. Horne, in his capacity as State Superintendent of Instruction, relief is needed in less than 21 days' time.

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2. Facts Demonstrating the Nature of the Emergency:

Following the District Court's entry of an order granting Plaintiffs' request for preliminary injunction on July 20, 2023 (the "Preliminary Injunction Ruling"), Intervenor-Defendants/Appellants Warren Petersen in his capacity as President of the Arizona State Senate and Ben Toma in his capacity as Speaker of the Arizona House of Representative ("Legislative Intervenor") filed a Motion for Stay in the District Court on July 24, 2023 (the "Legislative Intervenor's Emergency Motion for Stay"). The District Court denied the request for stay on July 31, 2023. The

Legislative Intervenors then filed with this Court an Emergency Motion Under Circuit Rule 27-3 For A Stay Pending Appeal on August 1, 2023.

As a result of the Preliminary Injunction Ruling, unless stayed, Plaintiff Doe will participate in a cross-country competition during the week of August 14, 2023. That participation will be in violation of the Save Women's Sports Act, A.R.S. § 15-120.02, which otherwise precludes Doe from competing against biological girls in school sports programs. Unless Doe finishes the race behind every biological girl participating in the race, Doe's participation will necessarily displace a biological girl from finishing in a higher-ranked position. Those biological girls will be irreparably harmed in the absence of a stay. Superintendent Horne therefore respectfully requests a ruling on this motion for stay by August 14, 2023.

3. Notice to Counsel:

The Legislative Intervenors conferred with Plaintiffs regarding their Emergency Motion for Stay. Plaintiffs stated that they oppose a stay of the preliminary injunction and do not consent to the Legislative Intervenors' Motion for Stay. Superintendent Horne will email a copy of his Emergency Motion for Stay to all counsel, who will also receive electronic notification at the time of filing.

4. Submissions to the District Court:

The Legislative Intervenors moved for a stay in the District Court two days after the District Court issued its order granting a preliminary injunction on July 24, 2023. The District Court denied the Legislative Intervenors' request on July 31, 2023.

## **ARGUMENT**

Pursuant to Federal Rule of Appellate Procedure 28(i), Superintendent Horne joins and incorporates by reference the Legislative Leaders Emergency Motion for Stay.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of August, 2023.

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**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

**Form 8. Certificate of Compliance for Briefs**

9th Cir. Case Number(s) 23-16030 and 23-16026

I am the attorney or self-represented party.

This brief contains 357 words, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (select only one):

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Signature: /s/ Dennis Wilenchik

Date: August 3, 2023



**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system on August 3, 2023.

In addition, a courtesy copy of the foregoing has been provided via email to the following counsel for Plaintiffs and other real parties in interest:

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